

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of)  
YOUNG BROTHERS, LIMITED )  
For Allowance of Rate Flexibility )  
Within a Reasonable Zone or, in )  
the Alternative, For A General Rate )  
Increase. )  
\_\_\_\_\_)

DOCKET NO. 01-0255

DECISION AND ORDER NO. 21768

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DIV. OF CONSUMER ADVOCACY  
DEPT. OF COMMERCE AND  
CONSUMER AFFAIRS  
STATE OF HAWAII

Filed April 22, 2005  
At 2:30 o'clock P.M.

Karen Higashi.  
Chief Clerk of the Commission

ATTEST: A True Copy  
KAREN HIGASHI  
Chief Clerk, Public Utilities  
Commission, State of Hawaii.

K. Higashi.

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Docket No. 01-0255

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DECISION AND ORDER

By this Decision and Order, the commission approves:

(1) YOUNG BROTHERS, LIMITED's ("YB" or "the Company") second year Cost of Service Study, filed on November 3, 2003 ("2002 COSS") and third year Cost of Service Study, filed on June 30, 2004 ("2003 COSS"); and (2) the December 6, 2004 Stipulation, attached to this Order as Exhibit A, by and between YB and the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate")(collectively referred to as "Parties") which, among other things, agrees to extend the previously approved three-year pilot program (December 20, 2001 to December 20, 2004) for an additional three (3) years (December 20, 2004 to December 20, 2007). This extension of the pilot program authorizes YB to continue its practice of filing for rate flexibility within an approved reasonable zone ("zone of reasonableness") and allows the Parties more time to assess the

impact to ratepayers before agreeing to continue the program on a permanent basis.<sup>1</sup>

I.

Introduction

On December 14, 2001, the Parties filed their Stipulation<sup>2</sup> to allow YB rate flexibility within a reasonable zone during a three-year pilot program, for the period December 20, 2001 to December 20, 2004, and to resolve the Parties' differences with respect to YB's Application For Allowance of Rate Flexibility Within a Reasonable Zone ("Zone of Reasonableness Application"), filed on October 1, 2001, in this docket.

On December 20, 2001, the commission issued Decision and Order No. 19115 approving the December 14, 2001 Stipulation, particularly the agreements, terms and conditions agreed to by YB and the Consumer Advocate, subject to the following modification and clarification:

Section IV entitled "STIPULATED MATTERS" paragraph no. 2.c. shall be modified as follows:

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<sup>1</sup>On December 6, 2004, the Parties filed a "Stipulation Between Young Brothers, Limited And The Division of Consumer Advocacy To Continue Decision and Order No. 19115 Rate Flexibility Within A Reasonable Zone" (hereinafter, "December 6, 2004 Stipulation").

<sup>2</sup>On December 14, 2001, the Parties filed a "Stipulation Between Young Brothers, Limited And The Division of Consumer Advocacy Regarding Young Brothers Application For Rate Flexibility Within A Reasonable Zone (hereinafter, "December 14, 2001 Stipulation").

If YB and the Consumer Advocate are not able to mutually agree on a new zone of reasonableness at the end of the three years, YB and the Consumer Advocate shall file their respective positions with the commission for the commission's determination. The Practice shall continue until further order of the commission.

Further, we clarify, with respect to Section IV, paragraph no. 3.c., that each of the cost of service studies filed in the second and third years shall be filed, by separate filing under protective order, for commission approval.<sup>3</sup>

Decision and Order No. 19115 also required YB to file a COSS based on 2001 operating data no later than the second quarter of 2002. On June 27, 2002, the commission issued Protective Order No. 19437. On June 28, 2002, YB filed its initial COSS ("2001 COSS"). On June 4, 2003, YB requested an extension of time to file its second year COSS to reflect the prior years results because the June 28, 2002 COSS was still pending before the commission. On June 12, 2003, the Consumer Advocate and YB filed their Stipulated Settlement Agreement ("2001 COSS Stipulation") regarding the COSS filed on June 28, 2002. On June 19, 2003, the commission issued Order No. 20239 granting YB's request to delay the filing of its second year COSS until 45 days after the commission issues its order approving the initial 2001 COSS model. On September 19, 2003, the commission issued Order No. 20454, approving YB's 2001 COSS, as modified by the 2001 COSS Stipulation ("Order No. 20454").

On November 3, 2003, YB filed its second year COSS ("2002 COSS") to reflect the prior years results. On June 30,

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<sup>3</sup>Decision and Order No. 19115 at p. 8-9.

2004, YB filed its third year COSS ("2003 COSS") to reflect the prior years results.

On December 6, 2004, the Parties filed their December 6, 2004 Stipulation relating to continuing the 3-year pilot program establishing rate flexibility within a reasonable zone for YB for another three (3) years for the period December 20, 2004 to December 20, 2007.

## II.

### Discussion

#### A.

#### 2002 and 2003 COSS

Order No. 20454, stated, in relevant part:

The purpose of the COSS is to distribute the costs incurred to provide the utility service across all revenue categories to determine the rates that would provide an opportunity to earn the authorized return on investment (i.e., the rate of return). Ideally, the rates for each revenue source should be cost based, resulting in an equal contribution to the authorized rate of return.<sup>4</sup>

Although we also recognized that YB's present rates are not cost based, the commission approved YB's 2001 COSS, as modified by the 2001 COSS Stipulation, based on its findings that it was "just and reasonable" and appeared "to represent a fair allocation between YB's interstate and intrastate operations."<sup>5</sup>

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<sup>4</sup>Order No. 20454 at 5.

<sup>5</sup>Order No. 20454 at 5, 18-19.

Upon review of the record, we find that the 2002 and 2003 COSS to be similar and consistent with YB's 2001 COSS, as modified by the 2001 COSS Stipulation. Thus, consistent with our findings stated in Order No. 20454, we also find YB's 2002 and 2003 COSS to be just and reasonable as they both appear to represent a fair allocation between YB's interstate and intrastate operations. Accordingly, the commission concludes that the 2002 and 2003 COSS should be approved, subject to same terms and conditions set forth in Order No. 20454.

#### December 6, 2004 Stipulation

In the December 6, 2004 Stipulation, the Parties assert that the objectives of the zone of reasonableness as stated by the Company in its Zone of Reasonableness Application filed on October 1, 2001 has not changed.<sup>6</sup> Specifically, the December 6, 2004 Stipulation states, in relevant part:

YB continues to believe that the zone of reasonableness concept will continue to allow for the streamlining of the regulatory process and improve its level of service to customers. Further, YB believes that the zone of reasonableness concept continues to be used at the Federal Level with Matson Navigation Company and Horizon Lines, both interstate carriers and potential competitors of YB. Also, in 2003, this [c]ommission entered into a pilot program with the motor carriers to determine whether the zone of reasonableness concept would provide similar benefits for this industry.

The Consumer Advocate and YB agreed that the zone of reasonableness concept deserves further consideration. By extending the program for an additional three years, both [P]arties will have more time to assess the impact to ratepayers before agreeing to

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<sup>6</sup>December 6, 2004 Stipulation at 4-5.

continue the program on a permanent basis. Further, the Consumer Advocate contends that the additional three years will allow the [P]arties an opportunity to determine the impact of the [Hawaii Superferry, Inc.'s] proposed operations on YB's operations since the [Hawaii SuperFerry, Inc.] is expected to have two ferries in commercial operation during the last year of the three-year extension period.<sup>7</sup>

Upon review of the record and consistent with our findings in Decision and Order No. 19115, we find that, the proposed agreements, terms and conditions agreed to by the Parties as set forth in the December 6, 2004 Stipulation are reasonable and in the public interest. We, thus, conclude that the proposed agreements, terms and conditions set forth in the December 6, 2004 Stipulation should be approved and the December 6, 2004 Stipulation should be adopted and made part of this Order.

### III.

#### Orders

##### THE COMMISSION ORDERS:

1. YB's 2002 and 2003 COSS is approved, subject to the same terms and conditions set forth in Order No. 20454. In particular, this approval does not constitute an approval for a change in rates, pursuant to Hawaii Revised Statutes ("HRS") Chapter 271G. Any future rate filings are subject to commission review and approval. YB shall continue to file its COSS under protective order by June 30 of the following year, to reflect the

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<sup>7</sup>*Id.*

prior year's results consistent with the terms and conditions of Order No. 20454.

2. The proposed agreements, terms and conditions of the Parties' December 6, 2004 Stipulation are approved, and the December 6, 2004 Stipulation shall be adopted and made part of this Decision and Order.


3. If necessary, the Consumer Advocate may file the applicable motions requesting the commission to institute investigations or proceedings for appropriate relief consistent with its statutory powers and duties set forth in HRS § 269-54.


4. The commission, upon its own initiative or motion, reserves the right to reopen this docket or open a separate docket at any time to institute an investigation or other proceeding to ensure, among other things, that the ratepayers affected by the instant proceeding are protected and that the implementation of the December 6, 2004 Stipulation is consistent with HRS Chapter 271G.

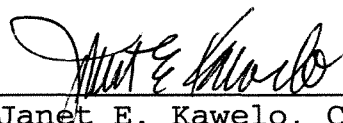
DONE at Honolulu, Hawaii

APR 22 2005


PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Carlito P. Caliboso, Chairman

By   
Wayne H. Kimura, Commissioner

By   
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:

  
Kevin M. Katsura  
Commission Counsel

01-0255.eh

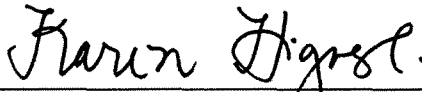
CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 21768 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
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Karen Higashi

DATED: APR 22 2005